

**Fullerton Municipal Airport
Lease Agreement
For
Management and Operation Of The
Airport Restaurant**

THIS LEASE ("Lease" or "Agreement") is made this 21 day of APRIL, 2014, (the "Effective Date") by and between the City of Fullerton, a Municipal Corporation, ("Lessor"), and Galley Café, Inc., a California corporation doing business as "Wings Cafe" ("Lessee").

1. DEFINITIONS

For the purposes of the Agreement, the following words and phrases shall be construed to have the meanings set forth below, unless otherwise specifically stated to the contrary or it is apparent from the context that a different meaning is intended:

- A. "Airport" means Fullerton Municipal Airport, located at 4011 West Commonwealth Avenue, Fullerton, California.
- B. "Airport Manager" means the Manager of the Fullerton Municipal Airport or his designee.
- C. "City" means the City of Fullerton, a California municipal corporation.
- D. "City Council" means the City Council of the City of Fullerton.

2. LEASED PREMISES

Lessor hereby agrees to lease to Lessee certain property at the Fullerton Municipal Airport, located at 4011 W. Commonwealth Avenue, Fullerton, California, and more particularly described in "Exhibit A" and shown on "Exhibit B," which exhibits are attached hereto and incorporated herein by this reference (the entire area covered by this Lease Agreement shall hereinafter be referred to as the "Leased Premises").

3. PERMITTED SERVICES AND USES

Lessee's use of the Leased Premises shall be that of a public restaurant engaged in the activities as specified below, and in accordance with all applicable Federal, State, and local laws, including, but not limited to, the requirements and limitations of the Fullerton Municipal Code, Chapter 18.

A. Authorized Services and Uses of the Leased Premises

During the term of this Agreement, Lessee shall be allowed to use the Leased Premises for the following permitted activities:

1. For the operation of a full service restaurant, seven days a week (except Thanksgiving Day, Christmas Day and New Year's Day), with minimum hours of 7:00 a.m. to 2:00 p.m.
2. To provide catering service on or off the Airport.
3. For the purpose of maintaining Lessee's offices, which offices shall be used for restaurant related uses only (subject to the approval of the Airport Manager).
4. Such other uses as may be approved in writing by the Airport Manager, and which uses are permitted under federal, state and local law.

B. Non-Permitted Uses of the Leased Premises

Lessee agrees not to use the Leased Premises for any unauthorized or illegal purpose, or to permit any other unpermitted activity within or from the Leased Premises. Lessee agrees that it shall only be entitled to use the Leased Premises for the uses and activities outlined in paragraph 3A. Any additional uses not specified above shall only be authorized if they are approved in writing, in advance, by the Airport Manager. Moreover, Lessee agrees not to conduct or permit to be conducted, any public or private nuisance in, on or from the Leased Premises. Lessor retains the right to approve or disapprove any additional services which go beyond the service of food.

4. TERM

- A. The term of this Lease shall be for a period of ten (10) years, commencing on the first day of the full calendar month following the Effective Date of this Lease.
- B. The Lessee is hereby granted and shall, if not in default under this Lease, have two (2) separate options to extend the term of this Lease for two (2) successive periods of five (5) years beyond the original expiration date of this Lease for a total extension of ten (10) years.
- C. Each of these five (5) year options will be exercised only if Lessee delivers to Lessor, at least six (6) months prior to the termination of the then current term, written notice of Lessee's election to exercise the option as provided in this section.
- D. If Lessee is in default of its obligations under the Lease on the date the notice to extend is given or on the date the next option is to commence, this Lease will expire at the end of the initial term, or the then existing option period as applicable.

5. RENT, FEES AND CHARGES

A. Base Rent

Upon the Rent Commencement Date as defined below, Lessee agrees to pay as base rent for the Leased Premises the sum of \$1,250 per month ("Base Rent"), payable monthly in advance on the first day of each month, which shall be considered late if not paid by the 10th day of each month. In addition to the Base Rent, Lessee shall be required to pay a late fee in accordance with Section 8 of this Agreement, if the full amount of the Base Rent, together with any other sum due by Lessee to Lessor, is not paid by the 10th of each month (the "Delinquent Date"). In the event an obligation to pay rent or fees terminates on some date other than the last day of the month, the last month's rent or fees shall be prorated, based on a thirty (30) day month to reflect the actual period of tenancy.

B. Gross Receipts Payment.

Each calendar month, in addition to Base Rent, Lessee must pay to Lessor a "Gross Receipts Payment" equal to three percent (3%) of the Gross Sales (hereinafter defined) generated from the Leased Premises over forty thousand dollars (\$40,000) (the "Breakpoint") during the calendar month in question. For example, if the Gross Sales during a month is \$50,000, the Gross Receipts Payment due to Lessor for that month is \$300 (calculated as follows: $\$50,000 - \$40,000 = \$10,000 \times .03 = \300). A Gross Receipts Payment shall not be required to be paid by Lessee during any month in which the Gross Sales generated from the Leased Premises are less than the Breakpoint. The Breakpoint shall increase annually on each anniversary of the Rent Commencement Date by one and one-half percent (1.5%).

The Gross Receipts Payment must be paid by Lessee to Lessor within forty (40) days of the last day of the calendar month in which the Gross Sales were generated. Lessee is encouraged to make the Gross Receipts Payment in conjunction with the regular monthly Base Rent Payment.

For the purposes of this Lease, "Gross Sales" shall be defined as the following:

1. The sale price of all food, beverage, goods, wares, merchandise and products sold on or from the Leased Premises by Lessee, whether for cash or for credit;
2. The charges made by Lessee for the sale or rendition on or from the Leased Premises of services of any nature or kind whatsoever, whether for cash or for credit;
3. All sums deposited in any coin-operated vending machine or other device maintained on the Leased Premises, regardless of ownership of the device, or whether the sums are removed and counted by Lessee or others, but only to the extent that Lessee is entitled to receive a percentage of those sums and not to exceed two percent (2%) of the monthly Gross Sales.

4. Gross Sales specifically excludes:
 - (a) bad debts;
 - (b) all sales and excise taxes payable by Lessee to Federal, State, County, or Municipal government, or other taxing authority, as a direct result of Lessee's operations upon the Leased Premises.
 - (c) the selling price of all merchandise purchased at the Leased Premises, returned by customers, and accepted for full credit, or the amount of discounts and allowances made therefor;
 - (d) sums and credits received in the settlement of claims for loss of, or damage to, merchandise; and
 - (e) sales of furniture, fixtures, equipment or other personal property.

B. Rent Commencement Date

Lessee shall commence payment of Base Rent together with any other sums due by Lessee to Lessor under this Lease ninety (90) days after the first day of the month following the date in which Lessee obtains all permits and governmental approvals necessary for Lessee to occupy and operate its business from the Leased Premises (the "Rent Commencement Date").

6. RENT ADJUSTMENT

Upon the Rent Commencement Date, the Base Rent as set forth above shall be subject to automatic annual adjustments of three percent (3%) per year. The automatic three percent (3%) adjustment to Base Rent shall occur on the first anniversary of the Rent Commencement Date, and every anniversary thereafter for the term of this Lease.

7. RENT PAYMENT PROCEDURE

Rent payments shall be delivered to and shall be filed with the City of Fullerton, City Treasurer, 303 West Commonwealth Avenue, Fullerton, California, 92832. The designated place of payment and filing may be changed at any time by Lessor, upon fifteen (15) days prior written notice to Lessee. Rent payments may be made by check payable to the City. Lessee assumes all risk of loss if payments are made by mail. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand, unless otherwise required herein. No payment by Lessee or receipt by Lessor of a lesser amount than the payment due, nor any endorsement or statement on any check of any letter accompanying any check or payment, shall be deemed an accord and satisfaction, and Lessor shall accept such check or payment without prejudice to Lessor's right to recover the balance of the amount due or pursue any other remedy, to which Lessor is legally entitled.

8. CHARGE FOR LATE PAYMENT

Lessee hereby acknowledges that the late payment of rent or any other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs shall be reasonable and shall include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting costs, etc. Accordingly, if any payment of rent as specified in the Paragraph in this Lease entitled "RENT, FEES AND CHARGES" or any other sum due Lessor under this Lease, is not received by Lessor by the Delinquent Date, a late charge of six percent (6%) of the payment due and unpaid shall be added to the payment, and the total sum shall become immediately due and payable to Lessor. An additional charge of six percent (6%) of said unpaid payment, excluding late charges, shall be added for each additional month or portion thereof that said payment remains unpaid.

Lessee and Lessor hereby agree that such late charges represent a fair and reasonable estimate of the costs that Lessor will incur by reason of Lessee's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue payment, or prevent Lessor from exercising any of the other rights and remedies granted hereunder or to which Lessor is legally entitled.

9. RECORDS AND ACCOUNTS

A. Records

Lessee shall keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. A willful failure by Lessee to abide by the terms of this paragraph shall constitute a default of this Agreement.

B. The Accounting Year

The accounting year shall be twelve full calendar months. The accounting year may be established by Lessee with written notice to Lessor. In the event Lessee fails to establish an accounting year of choice, regardless of the cause, the accounting year for purposes of this Agreement shall be the twelve-month period following the Rent Commencement Date. Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Rent Commencement Date not be the same, shall be accounted for as if it were a complete accounting year. Once an accounting year is established, it shall be continued throughout the term of the Lease unless Lessee specifically notifies Lessor in writing of a different accounting year at least sixty (60) days in advance of said change.

C. Financial Statements

Within one hundred twenty (120) days after the end of each accounting year, Lessee shall, at Lessee's sole cost and expense, submit to the City's Administrative Services Director, a statement which accounts for the business transacted on or from the Leased Premises for the previous accounting year. Lessee must attest under penalty of perjury that the statement prepared is an accurate representation of Lessee's records. Failure by Lessee to provide the statement within the required time frame shall be considered a default of this Agreement.

D. Audit

All Lessee's books of accounts, records, financial statements, financial reports, and supporting source documents relating to Lessee's operations at the Leased Premises ("Records") shall be kept and made available at one location within the limits of the County of Orange. Lessee shall keep and cause to be kept all said records for a minimum of three (3) years.

Lessor shall, through its duly authorized agents or representatives, have the right to examine and audit the Records at any and all reasonable times for the purpose of determining the accuracy thereof upon ten (10) days prior written notice to Lessee. Unreasonable failure to submit to an audit when requested shall be considered a default under this Agreement.

The City's Administrative Services Director, or his/her designee, upon request of Lessee, may authorize the Records to be kept in a single location outside the limits of Orange County provided Lessee shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for the City's Finance Director to send a representative to audit said books and records.

The right to perform an audit shall not be exercised by the City's Administrative Services Director or designee more than once each accounting year, unless the previous audit revealed that Lessee understated sales by more than 5% the prior accounting year, in which event the City's Administrative Services Director may perform an audit two (2) times per year.

The full cost of any audit, as reasonably determined by City's Administrative Services Director, shall be borne by Lessee if both of the following conditions exist:

1. The audit reveals an underpayment of more than five percent (5%) between the rent due as reported and paid by Lessee in accordance with this Lease and the rent due as determined by said audit;
2. Lessee has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Paragraph 9(A) "Records" above.

Otherwise, Lessor shall bear the cost of said audit, excluding the aforementioned expenses related to audit of Records kept outside the limits of Orange County.

10. SECURITY DEPOSIT

Prior to beginning its occupancy of the Leased Premises, Lessee shall provide Lessor with a security deposit in the amount of \$2,500 ("Security Deposit"), which amount shall be maintained by Lessor throughout the term of this Lease.

The Security Deposit shall take one of the forms set out below and as selected by Lessee. Said Security Deposit shall guarantee Lessee's full and faithful performance of all the terms, covenants, and conditions of this Lease:

- A. A cashier's check made payable to Lessor in the amount of \$2,500.
- B. The assignment to City of a savings deposit held in a financial institution in Orange County. At a minimum, such assignment shall be evidenced by the delivery to Airport Manager of an original passbook reflecting said savings deposit and a written assignment of said deposit to the City, in a form approved by the Airport Manager.
- C. Time Certificate of Deposit from financial institution in Orange County wherein the principal sum is made payable to the City, or order, in a form approved by the Airport Manager.
- D. An instrument or instruments of credit, in a form approved by the Airport Manager, from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing Lessee's performance and that all or any part shall be paid to the City, or order, upon demand by the City.
- E. A Faithful Performance Bond executed by a surety company, and issued in a form, reasonably approved by Lessor's City Attorney. Under the bond, the surety company shall guarantee to Lessor full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the Lessor, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the Lessor throughout the entire term of this lease. Said surety shall give the Airport Manager at least thirty (30) days prior written notice of cancellation or material change in said bond.

Airport Manager reserves the right to make commercially reasonable adjustments to the amount of Security Deposit to reflect material changes in operations or material changes in rents and fees established by Lessor. Within thirty (30) days after notification of any commercially reasonable change in the required Security Deposit amount from Airport

Manager, Lessor shall submit to the Airport Manager any additional Security Deposit as may be reasonably required.

Regardless of the form in which Lessee elects to make said Security Deposit, all or any portion of the principal sum shall be available unconditionally to Airport Manager for (i) repairing damage to the Leased Premises caused by negligence or willful misconduct of Lessee, (ii) correcting any default or breach of this Lease by Lessee, its successors or assigns, or (iii) for payment of expenses incurred by Lessor as a result of the failure of Lessee, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Whether Lessee elects to assign a savings deposit, provide a Time Certificate of Deposit, provide an instrument of credit or a Faithful Performance Bond to fulfill the Security Deposit requirements of this Lease, said assignment, certificate, bond or instrument shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to City or order upon demand by Airport Manager. The agreement entered into by Lessee with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above may allow the payment to Lessee or order of interest accruing on account of said deposit.

In the event Airport Manager reasonably withdraws any or all of the Security Deposit as authorized herein, Lessee shall, within ten (10) business days of written notice from Lessor of any withdrawal by Airport Manager, replenish the Security Deposit to maintain it at the amounts herein required. Failure to do so within ten (10) business days of prior written notice to Lessee, shall be deemed a default and shall be grounds for immediate termination of this Lease.

Lessee shall not be allowed to close any Security Deposit account, withdraw any Security Deposit funds, or to otherwise interfere with Lessor's rights to access the Security Deposit for the purposes described in this section, without first obtaining the prior written consent of the Lessor. Failure to abide by the terms of this paragraph shall be deemed a default and shall be grounds for immediate termination of this Lease.

The Security Deposit shall be rebated, reassigned, released, or endorsed by Airport Manager to Lessee or Lessee's designee, in accordance with applicable law following termination of the Lease.

The authorized refund of any Security Deposit by the Administrative Services Director, made upon the direction of the Airport Manager, after deduction of all amounts due Lessor under this Lease shall be made no later than thirty (30) days after the effective date of said Lease termination.

11. CONSTRUCTION BY LESSEE

A. Construction and Timing

Lessee shall cause to be designed, constructed, and installed within the Leased Premises, at no cost to Lessor, appropriate improvements to adequately accommodate (in Lessee's reasonable discretion) those services and uses required herein, and for any other optional services and uses approved by the Airport Manager.

The schematic plans prepared by Lessee and approved by the City shall be plans and specifications for development of the Leased Premises, and the working drawings prepared by Lessee and approved by Airport Manager shall be the plans, specifications, and time schedule for constructing improvements. Development proposed by Lessee in said plan may be scheduled in phases approved by Airport Manager and the City. Approval of the plans by Airport Manager are in terms of concept only. All necessary approvals for improvements related to required building permits shall be obtained from the City's Community Development Department.

B. Development Plan and Construction Standards

Development of the Leased Premises shall be conducted in a good and workmanlike manner.

All design and construction shall meet all other requirements contained in this Lease.

C. Permits and Development Fees

Lessee shall obtain, at its sole cost and expense, all necessary permits and pay for all fees and costs regularly assessed by the City, the County, and/or any State or Federal agency or department, related to the development and construction of any improvement on the Leased Premises.

12. CONSTRUCTION AND/OR ALTERATION BY LESSEE

A. Lessor's Consent

No structural improvements or facilities shall be constructed, erected, altered, or made on or within the Leased Premises without prior written consent of Airport Manager. Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by the Airport Manager as a condition to granting such consent, shall be conditions hereof as though originally stated herein. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by Lessee.

B. Strict Compliance with Plans and Specifications

All improvements constructed by Lessee within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by City of Fullerton.

13. LESSEE'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities, or any phase thereof, within the Leased Premises by Lessee, Lessee shall furnish to Lessor reasonable evidence that assures Lessor that sufficient monies will be available to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- A. Completion Bond issued to Lessor as obligee.
- B. Irrevocable letter of credit issued to Lessor from a financial institution to be in effect until Lessor acknowledges satisfactory completion of construction.
- C. Evidence of sufficient cash funds.
- D. Any combination or alternative of the above, subject to the City Attorney's approval.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and reasonably acceptable to Airport Manager and City Attorney.

All bonds and letters of credit shall be in a form reasonably acceptable to Airport Manager and shall ensure faithful and full observance and performance by Lessee of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Leased Premises.

14. MECHANICS LIENS OR STOP-NOTICES

Lessee shall at all times indemnify and save Lessor harmless from all claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities, within the Leased Premises, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a lien or stop-notice is imposed upon the Leased Premises or the Lessee's leasehold estate as a result of such construction, repair, alteration, or installation, Lessee shall either:

- A. Record a valid Release of Lien, or

B. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should Lessee fail to accomplish either of the two optional actions above within fifteen (15) days after receiving written notice of the filing of such a lien or stop-notice, the Lease shall be in default and shall be subject to immediate termination.

15. "AS-BUILT" PLANS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any substantial improvement within the Leased Premises, Lessee shall furnish Airport Manager a complete set of reproducibles and two sets of prints of "As-Built" plans. In addition, Lessee shall furnish Airport Manager an itemized statement of the actual construction cost of such improvement.

The statement of cost shall be sworn to and signed by Lessee or his responsible agent under penalty of perjury.

16. OWNERSHIP OF IMPROVEMENTS

All buildings, improvements, and facilities (exclusive of trade fixtures, furniture, signs and other personal property), constructed or placed within the Leased Premises by Lessee must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at Lessor's option shall be the property of Lessor at the expiration of this Lease.

17. UTILITIES

Lessee shall be responsible for and pay, prior to the Delinquent Date, all charges for utilities supplied to the Leased Premises, including, water, gas, trash, electric and telephone/internet.

18. MAINTENANCE

A. Lessor's Obligation

Lessor shall maintain or cause to be maintained, including repair and replacement as necessary, the foundation, roof, exterior walls, HVAC, electrical systems, plumbing/sewer systems (below grade), other mechanical systems public parking lots, roadways, and other public facilities within the Airport, except as noted below in Section 18(B) "Lessee's Obligation".

B. Lessee's Obligation

Lessee, at its expense, shall keep and maintain the interior of the Leased Premises including, but not limited to, interior surfaces and windows, electrical, plumbing, sewer, and trade fixtures and equipment in good condition and in substantial repair.

It shall be Lessee's sole responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair. Lessee shall also be responsible for periodic cleaning of the airport lobby restrooms located adjacent to the Leased Premises. Lessee shall have no repair or replacement obligations whatsoever related to the airport lobby or the airport lobby restrooms.

C. Lessor's Right to Repair

If Lessee fails to maintain or make repairs or replacements as required herein, the Airport Manager may notify Lessee in writing of said failure and establish a reasonable period of time within which Lessee must correct make the repairs or replacements. If Lessee fails to correct the situation within the stated period, the Lessor may, upon an additional five (5) days written notice, make the necessary repairs or replacements itself, and Lessee agrees to allow and not to interfere with such work. In such case, the cost of performing the repairs or replacements incurred by Lessor, including but not limited to the reasonable cost of labor, materials, equipment and administration, shall be paid by Lessee within thirty (30) days of receipt of a statement of said cost from Lessor. Lessor may, at its option, choose other remedies available herein, or by law. As used in this paragraph, the determination of what constitutes a reasonable period of time will be made by the Airport Manager, in his sole but reasonable discretion, and will depend on all of the circumstances involved. Serious problems and safety issues must be corrected immediately, without any delay, by the party whose responsibility it is to make the correction.

19. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

In the event of damage to or destruction of Lessee-constructed buildings, facilities, or improvements located within the Leased Premises, or in the event Lessee-constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease.

Repair, replacement, or reconstruction of improvements within the Leased Premises shall be accomplished in a manner and according to plans and/or permits reasonably approved by Airport Manager and the Community Development Department when applicable.

In the event of damage or destruction of the Leased Premises or if any portion of the Airport that affects the Leased Premises is materially damaged or destroyed by fire or any casualty which cannot, despite diligent, good faith efforts be repaired or restored within one-hundred eighty (180) days following the date on which such damage occurs, then Lessee may elect to terminate the Lease effective as of the date of such damage or

destruction. Within thirty (30) days after the date of such damage, the parties shall determine how long the repair and restoration will take. After that determination has been made, Lessee shall have a period of thirty (30) days to terminate the Lease by giving written notice to Lessor. If this Lease is not terminated, then Lessor shall immediately commence and diligently pursue to completion the repair of such damage so that the Leased Premises and the Airport are restored to a condition of similar quality, character and utility for Lessee's purposes as existed prior to such damage.

20. INSURANCE

Lessee shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operations and occupation and use of the Leased Premises. Lessee shall provide current evidence of the required insurance in a form acceptable to the Lessor and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained in this Agreement, or the extent to which Lessee may be held responsible for payments of damages to persons or property.

Notwithstanding the following, Lessor reserves the right to make commercially reasonable modifications or amendments to the following provisions at the direction of the City's Risk Manager as dictated by prevailing conditions.

A. Minimum Scope and Limits of Insurance. Lessee shall be required to maintain the following levels of insurance coverage:

1. General Liability Insurance. Lessee shall maintain airport liability insurance with a minimum limit of \$1,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
2. Employer's Liability Insurance. Lessee shall maintain \$1,000,000 per accident for bodily injury or disease.
3. Workers' Compensation and Employers' Liability Insurance. Lessee shall maintain workers' compensation insurance as required by the State of California.
4. Property Insurance. Lessee shall maintain all risk property insurance including coverage for Lessee improvements or betterments with a minimum limit equal to full replacement cost as approved by Lessor of the leased premises and with no coinsurance penalty provision.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be commercially reasonable.

C. Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Fullerton, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance, or use of the leased premises.
2. The Lessee's insurance coverage shall be primary insurance as respects for the City of Fullerton, its officers, officials, employees and volunteers.

The City of Fullerton must be named as a loss payee on the property coverage and the insurer shall agree to waive all rights of subrogation against the City of Fullerton.

The insurer must waive all rights of subrogation against the City, its officers, officials, employees and volunteers under the Worker's Compensation and Employer's Liability coverage.

Each insurance policy required by this clause must be endorsed to state that coverage will not be cancelled, except after 30 days prior written notice by certified mail, return receipt requested, has been given to the City of Fullerton.

D. Acceptability of Insurers

All required insurance shall be placed with insurers with current BEST'S ratings of no less than A-:VII, unless otherwise accepted by the City of Fullerton.

E. Verification of Coverage

LESSEE shall furnish the Lessor with certificates of insurance which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, LESSEE shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Lessor before LESSEE occupies Leased Premises. Lessor reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

21. INDEMNIFICATION

Lessee shall defend, indemnify, and hold harmless City of Fullerton, its officers, officials, employees and volunteers from and against any and all claims, demands, loss, liability, or attorney's fees and costs of any kind or nature which City of Fullerton officers, officials, employees or volunteers may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons, or damage to property to the extent arising out of, or related with this Lease or with

the occupancy and use of the Leased Premises by Lessee, its officers, agents employees, subtenants, licensees, excluding the City of Fullerton's active or passive negligence.

22. ASSIGNING AND SUBLetting

Lessee cannot assign this Lease or any interest in it, nor sublet the Leased Premises or any part of it, without the prior written consent of the City of Fullerton, which consent shall not be unreasonably withheld, conditioned or delayed. City of Fullerton's consent to any such assignment or subletting will not be deemed to be consent to any subsequent assignment or subletting. Any assignment or sublease entered into by Lessee and approved by the City of Fullerton is subject to all the terms and conditions of this Lease, including, but not limited to, a requirement that the new tenant must acknowledge in writing that it has received a copy of the Lease and is willing to abide by its terms and conditions.

23. CONDEMNATION

A. Total Taking

If the entire Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, the Lease shall terminate as of the date that possession of the Leased Premises is taken by the public authority or Lessee is deprived of its practical use of the Leased Premises, whichever date is earlier. The net proceeds of the award shall be distributed in the following order of priority:

1. Lessor shall receive that portion of the award which shall constitute compensation for the value of its fee interest in the Leased Premises as encumbered by this Lease; and
2. Lessee shall be compensated for its interest in the Leased Premises, including without limitation, the value of any fixtures and equipment taken, good will, relocation expenses and the loss of the economic benefit of Lessee's leasehold estate.

B. Partial Taking

If any portion of the Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the taking or purchase does not, in Lessee's reasonable judgment, substantially impair the operation on the Leased Premises, then:

1. The Lease shall continue in full force and effect, except that the Base Rent shall be reduced in the same proportion as the area of the Leased Premises taken

bears to the total area of the Leased Premises immediately prior to such taking; and

2. The net proceeds of the award shall be allocated in the following order of priority:
 - a. To payment of the costs of restoring the improvements located within the Leased Premises to substantially the same character and condition as prior to such taking, to the extent physically possible;
 - b. Compensation to Lessor for the value of its fee interest in the portion of the Leased Premises taken as encumbered by this Lease;
 - c. Compensation to Lessee for its interest in the portion of the Leased Premises taken, including the value of removal and reinstallation of any fixtures and equipment taken and the loss of the economic benefit of the portion of Lessee's leasehold estate taken; and
 - d. The remainder of the award shall be paid to Lessor.

If any portion of the Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the taking or purchase, in Lessee's reasonable judgment, renders it impractical to operate the remainder of the Leased Premises, or substantially impairs the operation of Lessee's business thereon, Lessee shall have the option of terminating the Lease without further liability hereunder.

If Lessee so elects to terminate, it shall do so by written notice to Lessor no later than sixty (60) days after the date when possession of (a portion of) the Leased Premises shall be taken by the condemnor or Lessee is deprived of its practical use thereof, which notice shall specify the effective date of such termination (which shall not be earlier than sixty (60) days after the date of said notice). If Lessee elects to so terminate, the division of the award shall be made on the basis set forth in Paragraph 23(A)(2). If Lessee does not timely elect to terminate the Lease, it shall conclusively be deemed to have waived its right to terminate this Lease for such cause, and the other provisions of this paragraph shall govern.

24. RULES AND REGULATIONS

Lessee shall be fully responsible to Lessor for the observance and obeyance of, and compliance with, any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, country, or city, lawfully exercising authority over Airport or activities thereon, including compliance with FAA and Airport security rules, regulations and plans.

Lessor shall not be liable to Lessee for any diminution or deprivation of possession or of its rights hereunder, on account of the exercise of such right or authority as provided in this paragraph, nor shall Lessee be entitled to terminate the whole or any portion of the leasehold estate herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with Lessee's use and occupancy of the leasehold estate herein created so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

25. AIRPORT PROMOTIONAL ACTIVITIES – INTENTIONALLY OMITTED.

26. NOTICES

All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested to the following addresses indicated below:

If to Lessor: Fullerton Municipal Airport
Attn: Airport Manager
4011 West Commonwealth Avenue
Fullerton, CA 92833

With a copy to: City of Fullerton
Attn: City Clerk
303 W. Commonwealth Avenue
Fullerton, CA 92832

If to Lessee: The Galley Café, Inc.
Attn: Brian White & Sherri White

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

Either party may change its address by giving notice in writing to the other party.

27 REPRESENTATIVES

The Airport Manager or his designee shall be the representative of Lessor for purposes of this Lease and may issue all consents, approvals, directives and agreements on behalf of the Lessor, called for by this Lease, except as otherwise expressly provided in this Lease.

Brian White and Sherri White, husband and wife, shall be the representative of Lessee for purposes of this Lease and may issue all consents, approvals, directives and agreements on

behalf of Lessee, called for by this Lease, except as otherwise expressly provided in this Lease.

28. TIME

Time is of the essence of this Lease.

29. SIGNS

Lessee agrees not to construct, maintain, or allow any sign upon the exterior of the Leased Premises except as approved by the City of Fullerton. Unapproved signs, banners, flags, etc. shall be removed by Lessee upon written notice by Airport Manager. Lessee, at its cost, shall have the right to install or place a "grand opening", "coming soon" or similar banner in, on or about the Leased Premises, to the maximum extent permitted by law and subject to Lessor's reasonable approval of location and method of attachment.

30. PERMITS AND LICENSES

Lessee shall be required to obtain any and all approvals, permits and/or licenses which are required in connection with the operations of the Leased Premises as set out herein. No permit approval or consent given hereunder by Lessor in its governmental capacity shall affect or limit Lessee's obligations hereunder, nor shall any approvals or consents given by Lessor, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

31. CONTROL OF HOURS

Lessee shall post a written schedule delineating the operating hours that shall be visible to the public at all times of the day. Lessee shall furnish Airport Manager a copy of said schedules and any revisions to the schedules.

32. HEADINGS

The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

33. AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

34. UNLAWFUL USE

Lessee and Lessor agree that no improvements shall be erected, placed upon, operated, nor maintained within the Leased Premises or the Airport, nor any business conducted or

carried on therein or therefrom, in violation of or contrary to the terms of this Lease, or of any federal, state or local law, regulation, order, statute, bylaw, or ordinance.

35. LESSOR'S RIGHT TO ENTER LEASED PREMISES

Lessor or its authorized representative shall have the right at all reasonable times to enter upon the Leased Premises to inspect the Leased Premises to verify compliance with this Agreement, to speak with Lessee concerning issues related to this Lease, to make necessary repairs and improvements as permitted herein, hazardous waste inspection and remediation, or for any other proper purpose.

36. TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all personal property taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Leased Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of the Lessee, and Lessee shall cause said taxes and assessments to be paid in a timely manner. Notwithstanding anything contained herein to the contrary, Lessee shall have no liability for real estate taxes related to the Leased Premises and/or the Airport.

37. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

38. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this paragraph shall excuse Lessee from the prompt payment of any rental or other charge required of Lessee, except as may be expressly provided elsewhere in this Lease.

39. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

40. WAIVER OF RIGHTS

The failure of Lessor or Lessee to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that Lessor or Lessee may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of this Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of the Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

41. DEFAULT, TERMINATION AND REMEDIES

A. The occurrence of any one or more of the following events shall constitute a default hereunder by Lessee:

- 1) The abandonment of the Leased Premises by Lessee.
- 2) The failure by Lessee to make any payment of rent or any other sum payable hereunder by Lessee, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Lessor to Lessee; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under the unlawful detainer statutes, California Code of Civil Procedure Section 1161 et seq.
- 3) The failure or inability by Lessee to observe or perform any of the provisions of this Lease where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that any such notice shall be in lieu of; and not in addition to, any notice required under the unlawful detainer statutes, California Code of Civil Procedure Section 1161 et seq; provided, further, that if the nature of such failure is such that it can be cured by Lessee but that more than thirty (30) days are reasonably required for its cure (for any reason other than financial inability), then Lessee shall not be deemed to be in default if Lessee shall commence such cure within said thirty (30) days, and thereafter diligently prosecutes such cure to completion.
- 4) In case of anticipation of bankruptcy, insolvency or financial difficulties:
 - a) Lessee or any guarantor of Lessee's obligations hereunder shall generally not pay its debts as they become due and shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefits of creditors;
 - b) A case is commenced by or against Lessee under Chapter 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Lessee, the same is not dismissed within sixty (60) days.

- c) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Leased Premises or of the Lessee's interest in this Lease where such seizure is not discharged within sixty (60) days; or
- d) Lessee's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts.

In the event of any such default, neither this Lease nor any interests of Lessee in and to the Leased Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the Lessor hereunder or by law; provided, it shall be lawful for the Lessor to declare the term hereof ended and to re-enter the Leased Premises and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or hereunder.

B. In the event of any default by Lessee, in addition to any other remedies available to Lessor at law or in equity, Lessor may exercise the following remedies:

- 1) Lessor may terminate this Lease and all rights of Lessee hereunder by giving written notice of such termination to Lessee. In the event that Lessor shall so elect to terminate this Lease, then Lessor may recover from Lessee:
 - a) The worth, at the time of award, of the amount by which the unpaid rent and other charges, which would have been earned after the date of the termination hereof until the time of award, exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;
 - b) The worth, at the time of award, of the amount by which the unpaid rent and other charges, for the balance of the term hereof after the time of award, exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;
 - c) Any other amount necessary to compensate Lessor for all of the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Leased Premises, expenses of re-letting, including necessary repair, renovation and alteration of the Leased Premises, reasonable attorney's fees, expert witness costs, and any other reasonable costs; and
 - d) Any other amount, which Lessor may by law, be permitted to recover from Lessee to compensate Lessor for the detriment caused by Lessee's default.

The term "rent" as used herein shall be deemed to mean the annual rent and all other sums required to be paid by Lessee pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 12-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 12-month period has occurred, then on the basis of the average monthly amount during such shorter period.

As used in subparagraphs B(1)(a) and B(1)(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in subparagraph A(3) above, the "worth at time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of ten percent (10%) per annum.

- 2) Continue this Lease in effect without terminating Lessee's right to possession even though Lessee has breached this Lease and abandoned the Leased Premises and to enforce all of Lessor's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided however, that Lessor may at anytime thereafter elect to terminate this Lease for such previous breach by notifying Lessee in writing that Lessee's right to possession of the Leased Premises has been terminated.
- B. Nothing in this Section shall be deemed to affect Lessee's duty to indemnify Lessor for liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under this indemnification clause or clauses contained in this Lease.

No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of such right or remedy of any default by Lessee hereunder. The acceptance by Lessor of rent or any other sums hereunder shall not be:

1. A waiver of any proceeding breach or default by Lessee of any provision thereof, other than the failure of Lessee to pay the particular rent or sum accepted, regardless of Lessor's knowledge of such proceeding breach or default at the time of acceptance of such rent or sum, or
2. A waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by Lessor or Lessor's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

C. All covenants and agreements to be performed by Lessee under any of the terms of this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any abatement of rent, unless otherwise stated herein. If Lessee shall fail to

pay any sum of money, other than rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Lessee, then in addition to any other remedies provided herein, Lessor may, but shall not be obligated to do so, and without waiving or releasing Lessee from any obligations of Lessee, make such payment or perform any such act on Lessee's part to be made or performed as provided in this Lease or may provide any such insurance on Lessee's behalf, however, Lessor's actions, if any, hereunder, shall not give rise to any responsibility of Lessor to continue making the same or similar payments or performing the same or similar acts. All costs, expenses and other sums incurred or paid by Lessor in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by Lessor shall be deemed to be additional rent hereunder and shall be paid by Lessee with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

42. ATTORNEYS' FEES

In the event of a dispute between Lessor and Lessee concerning claims arising out of this Lease, the prevailing party in said dispute shall be entitled to recover attorneys' fees and costs from the opposing party in an amount as may be fixed by the Court or the arbitrator.

43. RESERVATION TO LESSOR/RIGHT OF ENTRY

Lessor reserves the right to install, maintain, repair, and operate such sanitary sewers; telephone, data, and power lines; and the appliances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the Leased Premises or any part thereof, and to enter the Leased Premises for any and all such purposes so long as Lessor complies with Section 35 above.

Lessee understands and agrees that under no circumstances shall Lessor's entry onto any part of the Leased Premises held open to the general public, and/or any part of the Leased Premises located outside of an enclosed building constitute a trespass. Notwithstanding the above, no right reserved by Lessor in this paragraph shall be so exercised as to interfere unreasonably with Lessee's operations hereunder or to impair the security of any secured creditor of Lessee. In the case of inspections, Lessor shall provide Lessee with reasonable notice of the inspection before it takes place, unless the Airport Manager determines such notice may create a risk to the public safety or welfare, or unless an inspection without notice is permitted under applicable federal, state or local law. Lessor agrees that it shall use best efforts (except in cases of emergency likely to result in bodily harm or significant property damage): (i) to give at least twenty-four (24) hours prior written notice to Lessee of entry upon the Leased Premises, and (ii) to always minimize disruption and inconvenience to Lessee's business operations.

Lessor agrees that rights granted to third parties by reason of this paragraph shall contain provisions that the surface of the land shall be restored as nearly as practicable to its

original condition upon the completion of any construction. Lessor further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by Lessee, the rental rate shall be reduced in proportion to the interference with Lessee's use of the Leased Premises.

44. HOLDING OVER

In the event Lessee shall continue in possession of the Leases Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease, but a tenancy from month to month, and shall be governed by the conditions and covenants contained in this Lease or as otherwise provided by law.

45. CONDITION OF LEASED PREMISES UPON TERMINATION

Upon termination of this Lease, Lessee shall re-deliver possession of said Leased Premises to Lessor in broom clean condition, reasonable wear and tear, damage and destruction (not caused by Lessee), condemnation, : flood, earthquakes, war, and any act of war, excepted. References to the termination of the Lease herein shall include termination by reason of the expiration of the Lease term.

46. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If Lessee abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Lessee and left on the Leased Premises thirty (30) days after written notice from Lessor to Lessee, such personal property shall be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of such property without liability therefore to Lessee or to any person claiming under Lessee, and shall have no need to account therefore.

47. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including, but not limited to, termination by a material default pursuant to the terms set forth herein, Lessee shall execute, acknowledge, and deliver to Lessor, within thirty (30) days after receipt of a notice of termination, a quitclaim deed of Lessee's interest in and to the Leased Premises. Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of the Lease and of all right of Lessee or those claiming under Lessee in and to the Leaded Premises.

48. LESSOR'S RIGHT TO RE-ENTER

Termination of the Lease and re-entry of the Leased Premises by Lessor shall in no way alter or diminish any obligation of Lessee under the Lease terms and shall not constitute an acceptance or surrender.

Lessee waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or

in the event Lessor re-enters and takes possession of the Leases Premises in a lawful manner.

49. AUTHORITY OF LESSEE

If Lessee is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

50. PUBLIC RECORDS

Any and all written information submitted to and/or obtained by Lessor from Lessee or any other person or entity having to do with or related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, at the option of Lessor, may be treated as a public record which will made open to the public for inspection or copying pursuant to the California Public Records Act (Government Code Section 6250 et seq.) as now in force or hereafter amended, or any Act in substitution thereof. Lessee hereby waives, for itself, its agents, employees, sublessees and any person claiming by, through or under Lessee, any right or claim that such information is not a public record or that the same is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

51. RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor is not, and shall not in any way or for any purpose become, a partner of Lessee in the conduct of Lessee's business. This Lease and any related documents shall under no circumstances constitute a joint venture or partnership between Lessor and Lessee. The provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

52. MISCELLANEOUS PROVISIONS

Notwithstanding anything contained in this Lease to the contrary, Lessor agrees to the following:

A. Exclusive Use.

- a. Lessor shall not use or allow any other person or entity (except Lessee) to use any portion of the Airport for the sale of food and/or beverages for on- or off-premise consumption without Lessee's prior written consent in each instance ("Exclusive Use"). Lessee's Exclusive Use shall also apply to kiosks, carts and catering trucks.

- b. Notwithstanding the foregoing, the Exclusive Use set forth in this Section 52 shall be invalid to the extent such Exclusive Use violates the FAA's then-existing "Airport Sponsor Assurances".
 - c. Should Lessor violate the Exclusive Use, Lessee shall have the right to terminate this Lease upon thirty (30) days prior written notice to Lessor.
- B. Asbestos. If any asbestos is discovered in the Leased Premises during Lessee's inspection of the Leased Premises or construction of its tenant improvements, then Lessor shall promptly remove the asbestos or cause it to be removed at Lessor's sole cost and expense and if the foregoing delays the construction or installation of Lessee's improvements, then the Rent Commencement Date shall be extended for one (1) day for each day of delay.
- C. Lessee's Improvement Costs. Lessor agrees that in the event that this Lease is terminated or cancelled for any reason (other than Lessee's material default) prior to expiration of the Lease Term (as extended), that Lessee shall be entitled to recover from Lessor the unamortized value of improvements constructed or installed at (or in conjunction with) the Leased Premises by Lessee at Lessee's expense based on straight line depreciation over the initial term of the Lease with interest at ten percent (10%) per annum.
- D. Condition of the Property. Lessor represents and warrants that, as of the date Lessor delivers possession to Lessee, the Leased Premises and the Airport including, without limitation, all structural elements, the foundation, roof, roof membrane and roof system, exterior walls, plumbing, electrical, grease interceptor and other mechanical systems (a) are sufficient for Lessee's use, (b) meet and comply with all federal, state, and local laws, ordinances and regulations and all handicapped accessibility standards for the disabled, including, without limitation, those promulgated under the Americans With Disabilities Act ("ADA"), and (c) are seismically and otherwise sound and in good, workable and sanitary order, condition, and repair at the time of delivery of the Premises to Lessee. Lessor shall correct any latent defects promptly after Lessee notifies Lessor of any such defect. Lessor represents and warrants that it has disclosed to Lessee any conditions or restrictions, including, without limitation, environmental contamination, restrictions on utilities or exclusive use restrictions within Lessor's knowledge that would adversely affect Lessee's store design, permitting, construction and/or use as contemplated by this Lease.
- E. Lien Rights. Lessor shall have no security interest whether by law or through this Lease as to Lessee's personal property, equipment or fixtures during the term of this Lease, as may be extended. Lessor hereby waives any claim arising by way of any Lessor's lien (whether created by statute, contract or otherwise) with respect to Lessee's personal property and agrees to execute and deliver to any such secured creditor and/or lessor a commercially reasonable waiver of any lien Lessor may have upon such personal property.

- F. Lessor's Compliance with Laws. Lessee shall not be liable for any failure by Lessor to comply with any laws with respect to the Leased Premises or the Airport during the term hereof and Lessor expressly releases Lessee and will indemnify, defend and hold Lessee harmless from and against any and all claims and demands for loss or damage arising out of or in connection with any failure or alleged failure by Lessor.
- G. Grease Interceptor. After the initial delivery of possession of the Leased Premises to Tenant, Lessee shall contract for routine servicing of the grease interceptor exclusively serving the Leased Premises by a contractor reasonably approved by Lessor. Repair and/or replacement of the grease interceptor shall be the responsibility of Lessor.
- H. Lessor's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessor. Lessor's failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease within thirty (30) days after written notice by Lessee to Lessor of said failure (except when the nature of Lessor's obligation is such that more than thirty (30) days are required for its performance, then Lessor shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion). In the event of a default by Lessor, Lessee, at its option, upon an additional five (5) days prior written notice to Lessor, shall have the right to any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein: (a) to remedy such default or breach and should Lessor fail to reimburse Lessee within thirty (30) days following Lessor's receipt of Lessee's itemized invoice for such cure, to deduct the costs thereof from the installments of the rent next falling due not to exceed fifty percent (50%) of the Base Rent due in any month; (b) to pursue the remedy of specific performance; and (c) to seek money damages for loss arising from Lessor's failure to discharge its obligations under the Lease. Nothing herein contained shall relieve Lessor from its obligations hereunder, nor shall this Section be construed to obligate Lessee to perform Lessor's repair obligations.
- I. Quiet Enjoyment. Without limiting any rights Lessee may have by statute or common law, Lessor covenants and agrees that, so long as this Lease is in full force and effect, Tenant shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the Term of this Lease without interference or disturbance by Lessor (or by any person having title paramount to Landlord's title, or by any person claiming through or under Landlord). In the event that Lessee is disturbed or its use and occupancy of the Leased Premises is interfered with by reason of an event or action not within Lessee's reasonable control, then Lessee's rent payable hereunder shall be equitably reduced in proportion to the interference or disturbance with Lessee's use and occupancy of the Leased Premises.

J. Airport Operation. Lessor acknowledges that Lessee has entered into this Lease in reliance upon the fact that the Airport shall be continuously open and operating at the same, or substantially the same, capacity as on the Effective Date of this Lease. Should the Airport fail to be open and operating at a capacity substantially similar to that which existed on the Effective Date of this Lease, then Lessee shall have the unilateral right to terminate this Lease upon ten (10) days prior written notice to Lessor.

53. ATTACHMENTS TO LEASE

This Lease includes the following, which are attached hereto and made a part hereof:

- I. ATTACHMENT A – INTENTIONALLY OMITTED
- II. ATTACHMENT B – INTENTIONALLY OMITTED
- III. ATTACHMENT C – INTENTIONALLY OMITTED
- IV. ATTACHMENT D – SITE PLAN OF LEASED PREMISES

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LESSOR:

CITY OF FULLERTON



Doug Chaffee, Mayor

LESSEE:

GALLEY CAFÉ, INC.

By:  4-21-14

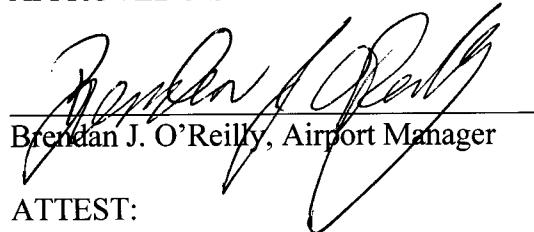
 4-21-14

APPROVED AS TO FORM:



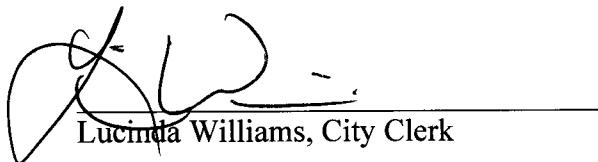
Richard D. Jones, City Attorney

APPROVED AS TO CONTENT:

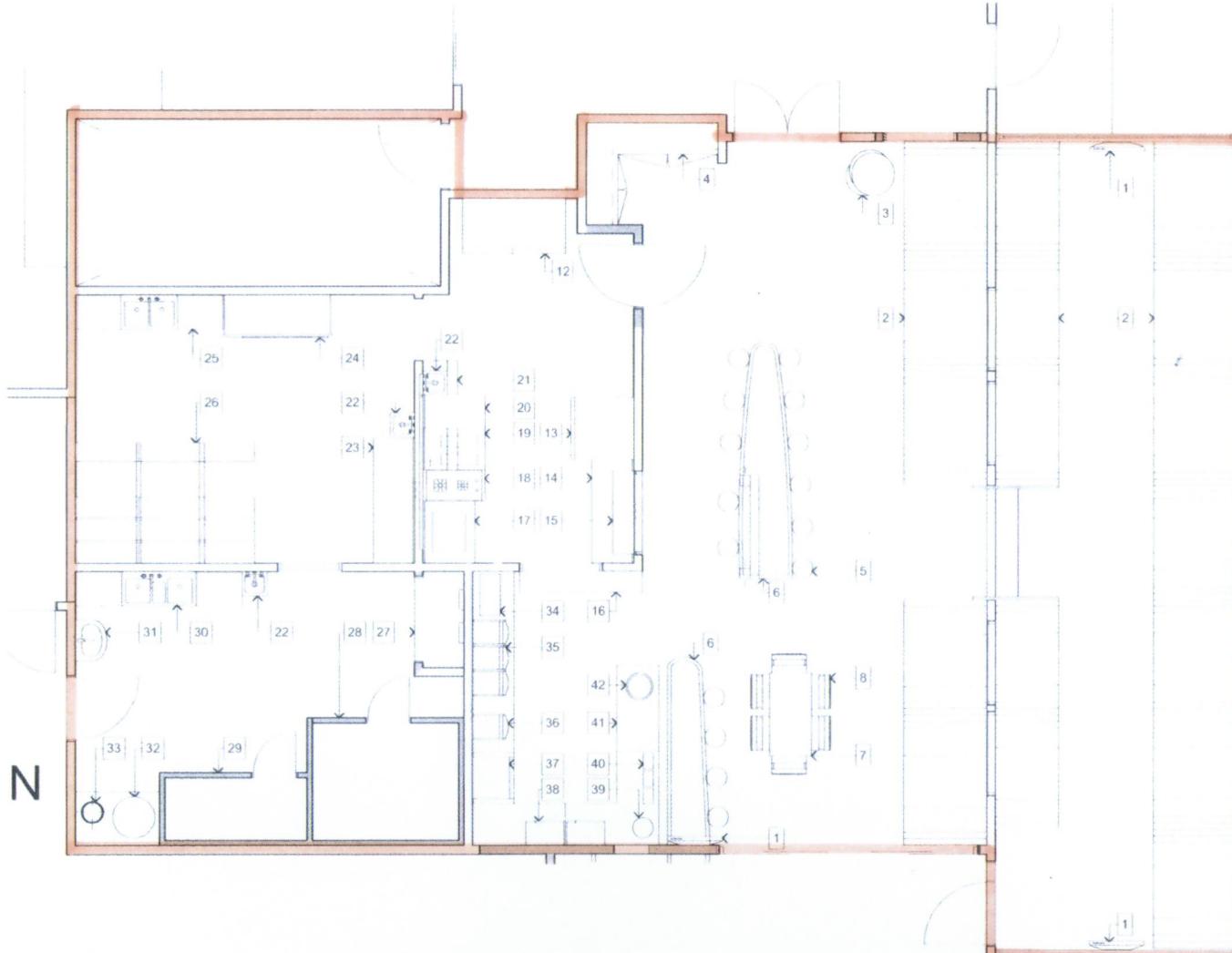


Brendan J. O'Reilly, Airport Manager

ATTEST:



Lucinda Williams, City Clerk



FLOOR PLAN KEYNOTES

- 1 LED FLATSCREEN TV
- 2 EXISTING BOOTH TO REMAIN
- 3 HOSTESS STAND
- 4 DISPLAY CASE WITH AUDIO/ VISUAL CONTROLS
- 5 BAR STOOL
- 6 "WING" COUNTER
- 7 TABLE
- 8 CHAIR
- 9 CEILING FAN
- 10 LOUNGE CHAIR
- 11 FIREPLACE
- 12 REFRIGERATOR--DOUBLE DOOR (BEER AND WINE)
- 13 REFRIGERATOR--SINGLE DOOR
- 14 PREPARATION TABLE- SANDWICHES
- 15 PICK-UP COUNTER
- 16 PICK-UP COUNTER (ADA)
- 17 FLAT GRILL
- 18 STOVE--TWO BURNERS
- 19 FRYER--TWO COMPARTMENTS
- 20 STAINLESS STEEL TABLE
- 21 EXISTING HOOD TO REMAIN
- 22 HAND SINK
- 23 PREPARATION TABLE
- 24 DISHWASHER
- 25 TWO COMPARTMENT SINK
- 26 HIGH-DENSITY STACKING SHELVES (DRY STORAGE)
- 27 ELECTRICAL ROOM
- 28 WALK-IN FREEZER
- 29 WALK-IN REFRIGERATOR
- 30 THREE COMPARTMENT SINK
- 31 EXISTING MOP SINK TO REMAIN
- 32 EXISTING WATER HEATER TO REMAIN
- 33 EXISTING WATER SOFTENER TO REMAIN
- 34 SODA FOUNTAIN
- 35 THREE POT COFFEE MAKER
- 36 1.5 POT COFFEE MAKER
- 37 UNDER-COUNTER REFRIGERATOR
- 38 MICROWAVE
- 39 BREAD STORAGE
- 40 TOASTER
- 41 COUNTER
- 42 BUILT-IN HAND SINK
- 43 BAR

